

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 302, “State Building Code—Accessibility of Buildings and Facilities Available to the Public,” Iowa Administrative Code, with the approval of the Building Code Advisory Council.

Iowa Code section 103A.7 requires that the State Building Code include reasonable provisions for “the accessibility and use by persons with disabilities and elderly persons, of buildings, structures, and facilities which are constructed and intended for use by the general public.” This Iowa Code section further provides that the requirements for accessibility are to be “consistent with federal standards for building accessibility.” The federal standards being referenced were originally codified in the Americans with Disabilities Act Accessibility Guidelines, published in 1994, and since 2004 these guidelines have served as the basis for Iowa’s accessibility requirements for buildings and facilities available to the public.

Last year, the U.S. Department of Justice adopted new accessibility guidelines published as the 2010 Standards for Accessible Design. Under federal regulations, compliance with the federal requirements for accessibility of buildings and facilities available to the public will be required as of March 15, 2012. The amendments proposed herein would retain the required consistency between Iowa requirements for accessibility of buildings and facilities available to the public and the parallel federal requirements and would consequently avoid the possibility of construction projects’ incurring significant additional costs in order to ensure compliance with two separate sets of standards for accessibility.

Any person may submit written comments regarding the proposed amendments by mail to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by fax to (515)725-6195; or by E-mail to admrule@dps.state.ia.us. Written comments must be received by 4:30 p.m. on January 3, 2012, or may be submitted at the public hearing.

There will be a public hearing regarding these amendments at 10 a.m. on January 3, 2012, in the First Floor Public Conference Room in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines. Any interested person may speak at the hearing. Persons who wish to speak at the hearing are encouraged to notify the Agency Rules Administrator by E-mail to admrule@dps.state.ia.us or telephone at (515)725-6185 at least one day prior to the hearing.

Provisions of the State Building Code are not subject to waiver, but instead are subject to the process for considering requests for alternate materials or methods of construction as provided in Iowa Code section 103A.13.

No fiscal impact on the state is anticipated.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 103A.7 and chapter 104A.

The following amendments are proposed.

ITEM 1. Amend rule 661—302.1(103A,104A) as follows:

661—302.1(103A,104A) Purpose and scope. Rules 661—302.1(103A,104A) through 661—302.20(103A,104A) are intended to ensure that buildings and facilities used by the public, other than places of worship, are accessible to, and functional for, persons with disabilities. Rules

~~661—302.1(103A,104A) through 661—302.11(103A,104A) apply Rule 661—302.3(103A,104A) applies statewide to new construction, of buildings and facilities available to the public and to renovation, and rehabilitation projects on existing buildings and facilities when local or state building codes require compliance with standards for new construction. Rule 661—302.20(103A,104A) applies statewide to construction of multiunit residential buildings.~~

~~Some requirements contained in rules 661—302.1(103A,104A) through 661—302.11(103A,104A) are not readily enforceable through the plan review process and may not be enforced through this means. Any of the requirements may be enforced during inspections in jurisdictions which inspect construction projects for compliance with building code requirements. Owners and operators of buildings and facilities subject to the provisions of rules 661—302.1(103A,104A) through 661—302.11(103A,104A) are responsible for compliance with any applicable requirements contained within these rules regardless of whether those requirements are enforced through plan reviews or inspections.~~

~~Rules 661—302.2(103A,104A) through 661—302.11(103A,104A) are NOTE A: Although rule 661—302.2(103A,104A) is based upon the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) 2010 ADA Standards for Accessible Design and in many instances adopt adopts the language of ADAAG the 2010 ADA Standards for Accessible Design by reference. However, and rule 661—302.20(103A,104A) is based upon the requirements of the federal Fair Housing Act, state and local building officials charged with enforcement of these rules 661—302.2(103A,104A) through 661—302.11(103A,104A) are unable to warrant the acceptance of any interpretation of ADAAG language approval of design or construction by federal agencies or any other state. A state or local official's decision to approve a building plan under rules 661—302.2(103A,104A) through 661—302.11(103A,104A) these rules does not prevent the federal government or another state from making a different decision under ADAAG or other applicable law, notwithstanding any similarities among such laws.~~

~~NOTE A: See rule 661—302.20(103A,104A) for specific requirements within the individual dwelling units and public and common use spaces of multiple dwelling unit buildings.~~

~~NOTE B: Other federal and state laws address requirements for accessibility for persons with disabilities and may be applicable to buildings and facilities subject to rules 661—302.1(103A,104A) through 661—302.20(103A,104A). Nothing in these rules should be interpreted as limiting the applicability of other provisions of state or federal law. These provisions include, but are not limited to, the following:~~

- ~~1. Iowa Code chapter 216, the Iowa Civil Rights Act of 1965.~~
- ~~2. Iowa Code chapter 216C, which enumerates the rights of persons who are blind or partially blind and persons with physical disabilities.~~
- ~~3. Iowa Code chapter 321L and 661—Chapter 18, which relate to requirements for parking for persons with disabilities.~~
- ~~4. The federal Architectural Barriers Act of 1968 (Public Law 90-480).~~
- ~~5. The federal Rehabilitation Act of 1973 (Public Law 93-112).~~
- ~~6. The federal Fair Housing Act of 1968 (Public Law 90-284), the federal Fair Housing Amendments Act of 1988 (Public Law 100-430), and related regulations, including 24 CFR 100, Subpart D.~~

ITEM 2. Rescind rule 661—302.2(103A,104A) and adopt the following **new** rule in lieu thereof:

661—302.2(103A,104A) Definitions. The following definitions are adopted for purposes of rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

“ADA” means the federal Americans with Disabilities Act, Public Law 101-336.

“ADAAG” means Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 28 CFR Part 36, Appendix A, as revised through July 1, 1994.

“ADASAD 2010” means 2010 ADA Standards for Accessible Design, published by the U.S. Department of Justice, September 15, 2010. Included in the publication are accessibility standards for state and local government facilities and accessibility standards for public accommodations and commercial facilities.

NOTE: Copies of ADASAD 2010 and additional explanatory material may be downloaded from <http://www.ada.gov/regs2010/ADAregrs2010.htm>.

"IBC 2009" means the International Building Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

ITEM 3. Rescind rule 661—302.3(103A,104A) and adopt the following **new** rule in lieu thereof:

661—302.3(103A,104A) Accessibility of buildings and facilities available to the public. Buildings and facilities which are available to the public, other than places of worship, shall comply with one of the following:

302.3(1) Applicable provisions of ADASAD 2010, or

302.3(2) IBC 2009, Chapter 11 and applicable accessibility provisions contained in IBC 2009.

ITEM 4. Rescind and reserve rules **661—302.4(103A,104A)** to **661—302.11(103A,104A)**.

ITEM 5. Amend the implementation sentence after rule **661—302.11(103A,104A)** as follows:

Rules 661—302.1(103A,104A) through 302.11(103A,104A) to 661—302.3(103A,104A) are intended to implement Iowa Code sections 103A.7, 103A.9, and 104A.1.